

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

GUILLERMINA PENA

VS.

STATE FARM LLOYDS AND
RAFAEL NAVARRO

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CIVIL ACTION NO.: _____

(JURY DEMANDED)

PETITION PROVIDING NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW Defendant **STATE FARM LLOYDS** (“State Farm”), pursuant to 28 U.S.C., §1446, filing this its *Petition Providing Notice of Removal* and for cause shows as follows:

I.

Plaintiff **GUILLERMINA PENA** instituted this civil action in the 389th Judicial District Court of Hidalgo County, Texas against Defendants **STATE FARM LLOYDS** and Rafael Navarro. True copies of all process and pleadings from the state court litigation are contemporaneously filed.

II.

This action is properly removable under 28 U.S.C., §1441(a) because the United States District Court has original jurisdiction pursuant to 28 U.S.C., §1332(a). This action is timely removable pursuant to 28 U.S.C., §1446(b). Defendant State Farm Lloyds first received notice of this suit when it was served with Citation on July 14, 2016; this removal petition is filed within 30 days thereafter.

III.

The Plaintiff is a natural person and resident of the State of Texas. Defendant State Farm Lloyds is an association of underwriters, whose citizenship for traditional diversity purposes is defined by the citizenship of its underwriters. See *Cronin v. State Farm Lloyds*,

No. 08-1983, 2008 WL 4649653 (S.D. Tex. Oct. 10, 2008). None of Defendant State Farm Lloyds' underwriters are citizens of Texas. "State Farm Lloyds is a domestic 'Lloyds Plan' unincorporated association of members, as contemplated by Texas law." *Massey v. State Farm Lloyds Ins. Co.*, 993 F.Supp., 568, 569 (S.D. Tex. 1998); *see Royal Ins Co. of Am. v. Quinn-L Capital Corp.*, 3 F.3rd 877, 882, 883 (5th Cir. 1993), *citing Carden v. Arkoma Assoc.*, 494 U.S. 185 (1990). "[F]or purposes of determining whether diversity jurisdiction exists, we conclude the members of a Lloyds group are the underwriters alone." *Massey*, 993 F.Supp. at 569.

Co-Defendant Rafael Navarro is a natural person and citizen of the State of Florida. As Rafael Navarro has not been served in the state court action, no need exists for Navarro to join in this notice of removal. *See Jones v. Houston Indep. Sch. Dist.*, 979 F.2d 1004, 1007 (5th Cir. 1992) (failure to join removal by defendant who had not been served was not a bar to the federal court's jurisdiction); *Destfino v. Reiswig*, 630 F3d 952, 957 (9th Cir. 2011) (co-defendant not properly served need not join in removal); *Hayden v. Allstate Tex. Lloyds*, No. H-10-646, 2011 U.S. Dist. LEXIS 6524 at *13, S.D. Tex. January 20, 2011 (exception for defendants not yet served to the rule requiring joinder of all defendants in removal).

IV.

Plaintiff's petition pleads claims and causes of action for breach of contract, common law and several statutory claims. The petition seeks monetary recovery for actual damages, statutory "additional" damages, punitive damages and attorney's fees. The petition pleads a monetary damages recovery of over \$200,000 but not more than \$1,000,000.00, thus the amount sought exceeds the amount in controversy threshold for removal jurisdiction.

V.

Notice of Removal to the United States District Court has been provided to the 389th Judicial District Court of Hidalgo County, Texas, from which this suit originated and to counsel for Plaintiff.

WHEREFORE, PREMISES CONSIDERED, Defendant State Farm Lloyds prays that this action be removed to the United States District Court for the Southern District of

Texas, McAllen Division; that it be afforded judgment; and, for such other and further relief that it may be entitled.

Respectfully submitted,

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Attorneys for Defendant STATE FARM LLOYDS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded to the following counsel of record on this the 15th day of August 2016:

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/s/ Scott T. Clark

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